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In the

Supreme Court of the United States

OCTOBER TERM, 1958

DALLAS GENERAL DRIVERS, WAREHOUSEMEN & HELPERS, LOCAL NO. 745,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITIONERS' REPLY TO BRIEF OF NLRB IN OPPOSITION

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GOLDBERG, PREVIANT & COOPER,
Of Counsel.

July 15, 1959.

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No. 973

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The Board's attorneys in their opposition to certiorari take the very opposite position to that which the Board itself explicated in the decision under attack.

1.

The questions are not "of a factual nature."

Now, the Board's attorneys say, Brief in Opposition, p. 8 ff.; that the Board merely infers "*from all the surrounding circumstances*" that picketing was directed at employees rather than customers (Opp'n, p. 8); and assert "the purpose of the picketing must be determined from a consideration of all the surrounding circumstances" (Opp'n, p. 9).

Then, the Board itself said in its Decision:

"The significance of such conduct [picketing at consumer entrances] *is that it necessarily invites employees to make common cause with the strikers.*" (Emphasis added.) 118 NLRB 1253 (Petition, p. 37 ff. at 41).

And the Board specifically refused to observe and evaluate the circumstances. Thus, the Board held "picketing of consumer entrances unlawful irrespective of the literal appeal of the legends on the picket signs" (Ibid. at p. 1253, Petition, p. 41). Further, the Board held "not controlling whether or not the picketing actually 'induced or intended to induce' any employees to engage in a strike" (Ibid. at p. 1253, ftnt 6, Petition, p. 41, ftnt 6). Nor did the Board so much as mention the undisputed record facts that clearly demonstrate that the picketing was directed *only* at consumers, viz: the timing of the picketing (in response to Associated's public advertisement of retail bargains, Resp. Ex. 3); the place of the picketing (carefully avoiding "delivery" entrances, B. A. 16); the impossibility of consumers observing the earlier picketing at the Associated warehouse (in an isolated industrial area, Union App., pp. 62-63); the communication with the Butchers Union (urging retail employees to ignore the picket line, B. A. 48).

Clearly, the Board itself ignored "all the surrounding circumstances", and banned the picketing solely on the ground specifically stated in the Board's Decision, that picketing at consumer entrances "necessarily invites employees to make common cause with strikers and this is so irrespective of the literal appeal on the picket signs", 118 NLRB 1253; Petition, p. 41.

2.

Conflict between Circuits

The Board attorneys' assertion that "the ruling below is not in conflict with the Decisions of the Second Circuit * * *" (Brief in Opposition, p. 9) appears frivolous when one refers to the Board's Decision at 118 NLRB 1251 at 1253, 1254, Ftnt. 6; Pet'n, p. 41, ftnt. 6. The Board there categorically admits the conflict, viz:

> "It is sufficient, as the majority has held in * * * Arnold Bakers, 115 NLRB 1333, that the necessary effect of such conduct is to induce employees to engage in a work stoppage * * *. *Although the Second Circuit came to a contrary conclusion in that case* (NLRB v. Local 50, Bakery & Confectionery Workers Int'l Union, 245 F. 2d 542), *we* * * * *respectfully disagree.*" (Emphasis added.)

WHEREFORE, petitioners respectfully request that the Petition for Certiorari be granted.

Respectfully submitted,

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July 15, 1959.

CERTIFICATE OF SERVICE

I, L. N. D. Wells, Jr., one of the attorneys for petitioners herein, and a member of the Bar of the Supreme Court of the United States hereby certify that copies of the foregoing Petitioners' Reply were this 15th day of July, 1959, served on adverse parties herein in accordance with Supreme Court Rules 21(1) and 33 by depositing the same in the U. S. Post Office at Dallas, Texas, with first class air mail postage prepaid addressed to counsel of record at his post office address, as follows:

The Solicitor General of the United States,
Department of Justice,
Washington 25, D. C.;

Jerome D. Fenton, General Counsel;

Thomas J. McDermott, Assoc. General Counsel, and

Marcel Mallet-Prevost, Assistant General Counsel

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